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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re AMBER S.,

a Person Coming Under the
Juvenile Court Law.

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

WILLIAM L.,

Defendant and Appellant.

B287403

(Los Angeles County
Super. Ct. No. 17CCJP00274-C)

APPEAL from a judgment of the Superior Court of Los Angeles County, Kim L. Nguyen, Judge. Affirmed in part, reversed in part.

Lori Siegel, by appointment of the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles, Acting Assistant County Counsel, and William D. Thetford, Principal Deputy County Counsel, for Plaintiff and Respondent.

SUMMARY

William L. (father) appeals from jurisdictional findings and disposition order of the juvenile court under Welfare and Institutions Code section 300, subdivisions (a) and (b)¹ with respect to his daughter, Amber S. The court sustained allegations that Amber was at serious risk of physical harm due to father's acts of domestic violence against the child's mother, M.S. (mother) in the presence of Amber and her half-siblings. On appeal, father challenges the sufficiency of the evidence to support jurisdictional findings under section 300, subdivisions (a) and (b). We find the evidence sufficient to support the court's findings and affirm.

Father also challenges the portion of the disposition order requiring him to submit to random drug and alcohol testing, and restricting him to monitored visitation. He argues that the juvenile court abused its discretion in making the testing order because there was no evidence he abused drugs or alcohol, and that monitored visitation was unnecessary as he posed no risk of harm to Amber. We agree with father, in part, and reverse the provision in the disposition order requiring drug testing. In all other respects, we affirm.

¹ Further undesignated statutory references are to the Welfare and Institutions Code.

FACTUAL AND PROCEDURAL BACKGROUND

Detention

At the time this case was initiated, then three-year-old Amber and her half-brothers, Angel S. and Anthony B., ages 11 and 6, respectively, resided with mother.² On September 5, 2017,³ respondent Department of Children and Family Service (DCFS) received a referral indicating that mother had neglected the children, and that her live-in companion physically abused Angel and Anthony. The petition also alleged that mother failed to ensure that Angel took his prescribed psychotropic medication, and the child was purported to have threatened to engage in self-harm and locked himself in a bathroom with a razor. Mother, overwhelmed by her own mental and emotional problems and the children's needs, acknowledged that she was unable to care for the children and requested that the children be detained. DCFS placed them in foster care.

On September 13, DCFS filed a section 300 petition alleging that mother's unstable mental health and emotional problems rendered her incapable of providing regular care for the children, as did her history of substance abuse and current use of drugs and alcohol. The petition also alleged that mother's companion physically abused Angel and Anthony, that mother failed to protect the children from such abuse, that mother

² Amber is the sole minor subject of this appeal. Neither mother nor the boys' fathers are parties to the appeal.

³ Unless otherwise noted, additional date references are to 2017.

medically neglected Angel by failing to provide him prescribed medication, and that mother had engaged in sexual intercourse with a series of men in the family home while the children were home. Mother identified Amber's father, and DCFS contacted father to inform him of the dependency matter.

Detention Hearing

Father attended the September 14 detention hearing, at which the court found him to be Amber's presumed father. The court found a prima facie case for removing Amber from parental custody, ordered monitored visits for each parent, and scheduled a jurisdiction hearing for November 1.

On October 26, DCFS filed the operative first amended petition (FAP), adding the allegations at issue here. Counts (a)(1) and (b)(7) of the FAP allege that Amber's parents have a history of domestic violence which took place in Amber's presence, and that father was the aggressor. The FAP alleged that father's violent behavior placed Amber at risk of physical harm, and that mother failed to protect the child from the domestic violence and had allowed father to reside and have unlimited contact with Amber. The FAP further alleged that father's physical abuse, coupled with mother's failure to protect Amber, endangered the child's physical health and safety and placed her at risk of serious physical harm or abuse and damage.

Jurisdiction/Disposition Report

In a report and last-minute information submitted to the court in preparation for the combined jurisdiction/disposition hearing, DCFS informed the court that mother had a two-year relationship with father. Mother claimed that, during the final year of their relationship, father committed more than 10 acts of physical violence against her, including slapping, hitting and/or punching her, and that the children witnessed this domestic violence. The first act of domestic violence occurred in October 2015. Father had asked mother for something. Mother did not recall her response, but said that father had punched her in the face, leaving a bruise on her cheek. All three children were present, and then one-year-old Amber had been seated beside mother when father punched mother. During the final incident of father's physical violence toward mother, father entered a room where she was doing laundry. The children were in the living room. Father asked mother "why [she was] so quiet" and then, inexplicably, began punching her arms.⁴ The children heard what was happening, and Angel came in and told father to "leave [his] mom alone." Angel left, then returned carrying a knife. Mother took it away from Angel and told her son "don't do anything, let [father] fuck me up." Mother did not report father to the police because she wanted her family to remain together. She believed father used witchcraft against her.

⁴ Mother explained to DCFS that she had remained quiet when father came in because she was afraid of him and afraid she might say the wrong thing.

Mother also told DCFS that she had been concerned about father's alcohol abuse. At some point, he began coming home drunk after work, leaving empty beer cans in the car. Mother had "constantly" reminded father that he should not drink and drive because he could kill himself or someone else. In response, father became increasingly frustrated with her.

When interviewed by DCFS, father claimed that his two-year relationship with mother ended because of their poor communication, and because he did not envision a future with her. Father denied having hit mother. He claimed she was emotionally abusive to him. She yelled at him for coming home late from work, and did not understand that it took him more than two hours to get home because of traffic.

Father told DCFS that he and mother separated after he came home from work one day and became upset because mother was on the phone and dinner was not ready. Mother began yelling and trying to hit father. Father told DCFS that, after he placed a hand on mother's shoulder to keep a distance between them, she called the police. That was the end of their relationship. Father denied engaging in any drug use and said he was merely a "social" drinker.

Father was arrested in 2014 after a fight at a friend's house. Father had been hit when the friend's neighbor began throwing bottles at father and his friend. Father responded by hitting the man with his shoes. Father was charged with assault with a deadly weapon (Pen. Code, § 245, subd. (a)(4)), and pled to a lesser charge of battery (Pen.

Code, § 242). He was placed on probation for three years and required to perform community service hours, which he had completed.

Father informed DCFS that he had maintained an active presence in Amber's life since his separation from mother, and wanted her to live with him at some point. Father had minimal contact with mother after they separated and, prior to the child's detention, had waited outside for Amber when he picked her up for visits. Father denied any knowledge of mother's substance abuse or her sexual activity. Father said mother had asked him to take Amber to live with him. He was not able to do so because he had no one to care for the child during his long and irregular work hours, and had no room for her. Father was "technically homeless," staying in a friend's small apartment and looking for his own place.

DCFS recommended that Amber not be placed with father, that he receive reunification services, that he complete a domestic violence program and parenting classes, and participate in at least 10 consecutive drug and alcohol tests and complete a substance abuse program if he tested positive or missed a test.

Jurisdiction/Disposition Hearing

At the November 1 adjudication hearing, the juvenile court admitted DCFS's reports and the results of mother's (clean) drug test in evidence. The court accepted the parties' stipulated testimony that it had "been approximately three years since the parents were together and that there [had] been no domestic violence incidents since they separated," and proceeded to argument.

With respect to the FAP's new counts, (a)(1) and (b)(7), children's counsel argued that the incident reported by mother—during which father was alleged to have assaulted mother and then eight-year-old Angel felt the need to intervene to protect mother with a knife—provided insight into the severity of the violence and mother's significant fear of father. Although the parents' relationship had since ended, they shared a child whom they would continue to co-parent. Unless the issues that led to the parents' physically violent relationship were addressed, children's counsel posited that similar incidents of physical violence would likely recur. She urged the court to sustain the FAP in its entirety.

Father's counsel reminded the court that father denied the allegations of violence, and argued that father's account was more credible than mother's. Counsel relied on *In re Daisy H.* (2011) 192 Cal.App.4th 713 (*Daisy H.*), in which the court found no substantial current risk of harm where the last incident of violence had occurred before the parents' relationship ended at least two (and more likely seven) years before DCFS filed the petition. (*Id.* at p. 717.) Father's counsel argued that here, as in *Daisy H.*, DCFS had failed to demonstrate a current substantial risk of physical harm due to domestic violence, because the parents' relationship ended three years earlier, any domestic violence that had occurred was remote in time and there was no indication they would reunite. Mother's counsel joined father's argument as to counts (a)(1) and (b)(7).

On behalf of DCFS, county counsel joined the children's counsel's argument regarding the counts alleged against father. DCFS argued

that *Daisy H.* was inapposite because, in that case, the parents may have been apart for as long as seven years without incident. Moreover, in contrast with the infant Amber, who sat next to mother when father punched her, or Angel and Anthony, who were present and intervened when father assaulted mother, the children in *Daisy H.* had not witnessed any domestic violence between their parents. In addition, unlike *Daisy H.*, the physical violence here was more serious than a “simple pushing or shoving or argument situations.” Finally, counsel noted that father had also been arrested for a violent crime, thus demonstrating a pattern of physical violence.

The juvenile court sustained the (a)(1) and (b)(7) counts. The court stated that it found mother’s account credible and observed that, based on a totality of the evidence, the record contained ample evidence that father engaged in acts of domestic violence against mother over a sustained period, and that mother lived in fear of him. In addition, the domestic violence not only had occurred in the presence of infant Amber, but also had involved an incident so severe that mother’s eldest son felt the need to protect mother from father by using a knife.

Proceeding to disposition, father’s counsel objected to the proposed case plan, and requested unmonitored visits.⁵ The juvenile court ordered that parents be provided reunification services. Father was ordered to attend parenting classes, to complete a domestic violence

⁵ DCFS’s September 17, 2018 Motion to Augment the record (MTA) to include father’s court-ordered case plan (MTA, Ex. 1), incorporated by reference in the juvenile court’s November 1 minute order, is hereby granted.

program, and to submit to five random drug and alcohol tests (with the proviso that, if he tested positive or missed a test, he would be required to complete a full substance abuse program). The court ordered that father receive two monitored visits per week, and gave DCFS discretion to liberalize visitation. Father timely appealed.

DISCUSSION

Father contends the juvenile court's jurisdictional findings were erroneous because there was no evidence that at the time of the jurisdiction hearing Amber was at risk of suffering physical harm. He also argues that the court erred in making dispositional orders based upon erroneous jurisdictional findings, and that the record contains insufficient evidence to support the court-ordered case plan requiring him to submit to random drug and alcohol testing, and restricting him to monitored visitation.

1. *The Standard of Review*

We review a juvenile court's jurisdictional findings and dispositional orders for substantial evidence. "In reviewing a challenge to the sufficiency of the evidence supporting the jurisdictional findings and disposition, we determine if substantial evidence, contradicted or uncontradicted, supports them. "In making this determination, we draw all reasonable inferences from the evidence to support the findings and orders of the dependency court; we review the record in the light most favorable to the court's determinations.'" (*In re I.J.* (2013) 56 Cal.4th 766, 773 [appellate court will review entire record to determine

if it discloses sufficient evidence such that a reasonable fact-finder could conclude the order in question is appropriate] (*I.J.*); *In re X.S.* (2010) 190 Cal.App.4th 1154, 1160 [appellate court will affirm trial court’s findings if findings are supported by reasonable, credible evidence of solid value].)

““We do not reweigh the evidence or exercise independent judgment, but merely determine if there are sufficient facts to support the findings of the trial court. [Citations.]”” (*I.J., supra*, 56 Cal.4th at p. 773.) It is the trial court’s role to assess witness credibility and resolve evidentiary conflicts. “We have no power to judge the effect or value of the evidence, to weigh the evidence, to consider the credibility of witnesses or to resolve conflicts in the evidence or the reasonable inferences which may be drawn from that evidence. . . .’ [Citation.]” (*In re A.S.* (2011) 202 Cal.App.4th 237, 244 (*A.S.*); *I.J., supra*, at p. 773.)

2. *Substantial Evidence Supports the Jurisdictional Findings*

a. *Section 300, subdivision (a)*

Under section 300, subdivision (a), a juvenile court may exert dependency jurisdiction if a “child has suffered, or there is a substantial risk that the child will suffer, serious physical harm inflicted nonaccidentally upon the child by the child’s parent. . . . For purposes of this subdivision, a court may find there is a substantial risk of serious future injury based on the manner in which a less serious injury was inflicted, a history of repeated inflictions of injuries on the child . . . , or a combination of these and other actions by the parent . . . that indicate the child is at risk of serious physical harm.” (§ 300, subd. (a).)

Exposing a child to domestic violence between her parents may trigger jurisdiction under this provision if the violence places the child in harm's way, and there is evidence the violence will likely continue. (*In re Giovanni F.* (2010) 184 Cal.App.4th 594, 598–599 (*Giovanni F.*); *Daisy H.*, *supra*, 192 Cal.App.4th at p. 717; *In re M.M.* (2015) 240 Cal.App.4th 703, 720 (*M.M.*) [engaging in domestic violence in close proximity to a child supports a jurisdictional finding under § 300, subd. (a)].) Subdivision (a) does not require that a parent direct his or her violence at the child (*M.M.*, *supra*, at pp. 719–720), because “[d]omestic violence [itself] is nonaccidental” (*Giovanni F.*, *supra*, at p. 600).

Because this provision governs circumstances where there is a “substantial risk” of harm, there is no need to show that the child previously suffered harm by the domestic violence. (*Giovanni F.*, *supra*, 184 Cal.App.4th at p. 598; see also *In re Kadence P.* (2015) 241 Cal.App.4th 1376, 1383 [“the court need not wait until a child is seriously abused or injured to assume jurisdiction and take steps necessary to protect the child”]; *In re Yolanda L.* (2017) 7 Cal.App.5th 987, 993 [same].) Domestic violence between parents is detrimental to children even if the child is not a direct witness. (*In re E.B.* (2010) 184 Cal.App.4th 568, 576 (*E.B.*).) It is a failure to protect a child from the substantial risk of suffering serious physical harm or illness from the violence. (*Ibid.*) A child may be at risk of physical harm by chance encounter, such as being in the same room in which it occurs, or being hit by a nonaccidental errant punch by virtue of her close proximity to the parent who is the victim of the violence. (*Ibid.*) Even if the child

does not suffer physical harm, exposure to violence between parents may cause significant suffering. (*Ibid.*) The underlying rationale for this rule is that “[d]omestic violence in the same household where children are living . . . is a failure to protect [the children] from the substantial risk of encountering the violence and suffering serious physical harm’ [Citation.]” (*Ibid.*; see also *In re R.C.* (2012) 210 Cal.App.4th 930, 942 (*R.C.*).)

Here, substantial evidence supports the court’s finding that domestic violence between her parents placed Amber at substantial risk of serious physical harm. In finding the section 300, subdivision (a)(1) allegations supported by a preponderance of the evidence, the court found credible mother’s evidence that father had hit, slapped or punched her on more than 10 occasions over the course of a year.⁶ Mother recounted two specific instances (the incidents on the couch and while she was doing laundry) during which father physically assaulted her when at least one child was present. The latter occasion was so severe that Angel found it necessary to try to intervene with a knife to protect mother. The court found there was ample evidence that father

⁶ Father maintains that his denial of domestic violence was more reliable than mother’s account because, among other things, mother abused drugs, was mentally unstable, neglected her children, and believed that father had practiced witchcraft on her. We reject father’s invitation to reweigh the evidence or make new credibility findings. It is the trial court’s role to assess witness credibility and resolve evidentiary conflicts. (*A.S., supra*, 202 Cal.App.4th at p. 244.) So long as it is reasonable, credible and of solid value, we must accept as true the evidence most favorable to the juvenile court’s order and ignore unfavorable evidence as lacking sufficient verity to be accepted by the fact-finder. (*Ibid.*)

committed repeated acts of physical violence against mother over a sustained period. This evidence supports the finding that father engaged in nonaccidental acts of domestic violence while the children were in harm's way. The court also found that the pattern of violence would likely continue because mother and father would maintain contact while co-parenting Amber.

Father's effort to align this case with *Daisy H.* is not persuasive. In *Daisy H.*, the court reversed a finding that children were described by section 300, subdivisions (a) and (b), because the evidence showed that domestic violence between the parents last occurred "probably seven years" before the dependency matter was filed, and there was no evidence any child had been exposed to domestic violence. (*Daisy H.*, *supra*, 192 Cal.App.4th at p. 717.) Father argues that, even if mother's account is credited, under *Daisy H.*, the jurisdictional finding under subdivision (a) must be reversed because there is no evidence of domestic violence since the parents ended their relationship, three years before the FAP was filed. Thus, there was no showing that Amber was at risk of harm at the November 2017 jurisdiction hearing or in the future. He is mistaken. As the trial court pointed out, dependency jurisdiction is inherently fact-driven and the evidence must be viewed in its totality. Here, unlike *Daisy H.*, *supra*, 192 Cal.App.4th 713, which involved a single incident of domestic violence that likely occurred seven years before the petition was filed, there were many more recent acts of violence which the court found would likely continue. (See *Daisy H.*, at p. 717 [a single incident two to seven years

prior to dependency petition present insufficient evidence of future risk to children].)

Although father acknowledges that domestic violence is non-accidental harm, he argues that the issue “under section 300, subdivision (a) is whether the *particular violence* at issue provides sufficient evidence of a substantial risk of serious physical harm inflicted on the child non-accidentally in the future.” (Italics added.) He points to *Giovanni F.*, *supra*, 184 Cal.App.4th 594, as an example in which the evidence supported a finding of non-accidental risk to the child based on the criminal law doctrine of “transferred intent.” (See *People v. Scott* (1996) 14 Cal.4th 544 (*Scott*).)⁷

In *Giovanni F.*, a father physically assaulted the mother while driving a car in which she and his infant son were passengers, using one hand to drive and the other to hit and choke the mother. The parents then engaged in a tug-of-war over the car seat, while the child was still seated in it. The court found that the father’s volitional acts of violence aimed at the mother recklessly and necessarily placed the bystander infant at substantial risk of suffering serious physical harm. (*Giovanni F.*, *supra*, 184 Cal.App.4th at pp. 598–601.) Father argues that, unlike *Giovanni F.*, there was no evidence of his “intentional abuse or violence that consciously subjected Amber to immediate injury,

⁷ The doctrine of “transferred intent” provides that, if a defendant shoots at an intended victim with intent to kill but misses and hits a bystander, the defendant is subject to the same criminal liability as if he had hit his intended victim. (*Scott*, *supra*, 14 Cal.4th at p. 551.)

or placed her at risk of such injury” because he never knowingly placed Amber in imminent danger, and his visits with her after the parents’ relationship ended were without incident. Thus, father maintains that his earlier “intentional and reprehensible” acts of physical violence posed no substantial risk of future non-accidental harm to Amber.

Father’s argument fails to acknowledge that the court need not wait until a child sustains actual injury before providing protection. (*I.J., supra*, 56 Cal.4th at p. 773.) He also ignores the purpose of the doctrine of transferred intent, which would not require evidence that he did or would intentionally harm Amber in order for his violence against mother to support jurisdiction under subdivision (a). (*Scott, supra*, 14 Cal.4th at p. 554.) All that is required is that father’s nonaccidental acts of violence aimed at mother (e.g. purposefully punching her while Amber sat close by) placed the child at substantial risk of physical harm. Father’s intent to harm mother is transferred to Amber for the purposes of father being held responsible for his actions. (*Giovanni F., supra*, 184 Cal.App.4th at pp. 598-601; *Scott, supra*, at p. 554.)

The court rejected father’s blanket denial that he ever committed physical violence against mother. Indeed, the court implicitly found that father’s refusal to acknowledge his propensity for physical violence made it more likely such behavior would recur. Past violence in a relationship is a good predictor of similar behavior in the future. (See *In re T.V.* (2013) 217 Cal.App.4th 126, 133; *E.B., supra*, 184 Cal.App.4th at p. 576.) Furthermore, “denial is a factor often relevant to determining whether persons are likely to modify their behavior in the future without court supervision.” (*In re Esmeralda B.* (1992) 11

Cal.App.4th 1036, 1044; see *In re Gabriel K.* (2012) 203 Cal.App.4th 188, 197 [“One cannot correct a problem one fails to acknowledge”]; *Giovanni F.*, *supra*, 184 Cal.App.4th at p. 601 [parent’s denial of domestic violence increases risk]; *In re J.N.* (2010) 181 Cal.App.4th 1010, 1025-1026 [in assessing risk, court should consider “parent’s current understanding of and attitude toward the past conduct that endangered a child”].)

The juvenile court carefully considered *Daisy H.* (and other relevant authorities) and correctly concluded there is no per se rule regarding the timing of acts of domestic violence for purposes of determining whether assertion of jurisdiction was in order. The court properly concluded that, in dependency cases, the issue of risk of harm posed by domestic violence is a matter of degree which requires a holistic review of the evidentiary record. Based on the totality of the evidence, the court found the assertion of subdivision (a) jurisdiction appropriate, given father’s multiple volitional acts of physical violence against mother over a sustained time in the children’s presence, coupled with father’s denial that such violence occurred and the likelihood that the parents would maintain contact with one another if they continued to co-parent.

b. *Section 300, subdivision (b)*

A child is within the jurisdiction of the juvenile court under section 300, subdivision (b) if “[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or

guardian to adequately supervise or protect the child.” (§ 300, subd. (b).) DCFS must establish, by a preponderance of evidence, neglectful conduct by a parent in a specified form, causation and a serious physical harm or illness, or a substantial risk that such harm will reoccur. (*R.C.*, *supra*, 210 Cal.App.4th at p. 941; *In re Jesus M.* (2015) 235 Cal.App.4th 104, 111.) The juvenile court need not wait until a child suffers actual harm to protect her from a perceived risk. Substantial likelihood is sufficient. (*I.J.*, *supra*, 56 Cal.4th at p. 773.)

The court’s jurisdictional finding under section 300, subdivision (b) also finds substantial evidentiary support. “[D]omestic violence in the same household where children are living *is* neglect; it is a failure to protect . . . from the substantial risk of encountering the violence and suffering serious physical harm or illness from it. Such neglect *causes* the risk.” (*In re Heather A.* (1996) 52 Cal.App.4th 183, 194.) Amber was directly involved in and placed at actual or potential risk of physical harm by repeated acts of domestic violence by father. The conduct described above placed the child at risk of harm, and supported the jurisdictional finding under section 300, subdivision (b)(1).

Father acknowledges that proof that domestic violence would likely continue would place Amber at risk of physical harm and be sufficient to sustain the (b) count. However, he argues there is no evidence that Amber suffered actual injury during the domestic violence incident she observed. Father also asserts there is no evidence he has harmed her during any of the visits with her since the parents separated. But DCFS need not show that Amber suffered actual injury. (*I.J.*, *supra*, 56 Cal.4th at p. 773.)

Father also tries to distinguish this case from *R.C., supra*, 210 Cal.App.4th 930, by noting there is no evidence that Amber engaged in detrimental behavior after witnessing the parents' domestic violence. The issue is not whether Amber might hurt herself because she witnessed father strike mother. What matters is that father's physical violence against mother while Amber was nearby placed the child at risk of physical harm. The juvenile court concluded that evidence of a year of repeated acts of domestic violence during the parents' relationship outweighed an absence of evidence of violence during the years the parents were apart. We reject father's invitation to reweigh the evidence.

3. *The Disposition Orders*

The juvenile court approved a case plan requiring father to complete parenting classes⁸ and a domestic violence program, and to submit to five random or on-demand drug and alcohol tests (and, if he missed a test or tested positive, to complete a full substance abuse program). The court also ordered twice weekly monitored visits, and gave DCFS discretion to liberalize visitation.

The court has broad discretion to decide what will best serve a child's interest and to fashion a dispositional order accordingly. (See *In re Jose M.* (1988) 206 Cal.App.3d 1098, 1103-1104; *In re Eric B.* (1987) 189 Cal.App.3d 996, 1005.) Once a child has been declared a

⁸ Father does not take issue with the order requiring him to complete a parenting class.

dependent, the court may limit a parent's control over his child, so long as the limitations imposed do "not exceed those necessary to protect the child." (§ 361, subd. (a)(1).)

Absent a showing of a clear abuse of discretion, we will not disturb the court's exercise of discretion in fashioning a disposition order. (*In re Briana V.* (2015) 236 Cal.App.4th 297, 311.) The question is whether a rational fact-finder could conclude that the order was designed to advance the child's best interests. (*In re Natalie A.* (2015) 243 Cal.App.4th 178, 186–187 (*Natalie A.*)). Moreover, in crafting a disposition order, the court is not limited to addressing problems described in the sustained petition. (See *Briana V.*, *supra*, at p. 311.)

a. *Domestic Violence Program and Random Testing*

Proceeding from the premises that he was a non-offending parent, that the parents had minimal contact during three years apart and would continue to do so, and that there was no evidence he subjected Amber to any violence during visits, father argues that the court abused its discretion by ordering him to participate in a domestic violence program. Similarly, father argues that there is no evidence that he uses drugs, or that he is anything more than a "social" drinker. Accordingly, he contends it was "unreasonable [and] unwarranted" for the court to require that he undergo random drug and alcohol testing, and the order was not designed to address the reasons that brought Amber to the court's attention, i.e., mother's neglect and mental health issues. Father arguments are largely, but not wholly, flawed.

First, credible evidence of father's violent, endangering conduct supports the jurisdictional finding and father is not a "non-offending parent." Although it was mother's conduct that initially brought the family to DCFS's attention, the FAP makes it clear that significant concerns arose during DCFS's investigation regarding dangers posed to Amber by father's violent conduct. Those concerns formed the basis for the disposition order as to father.

Second, notwithstanding the parents' separation, the trial court found that, left unaddressed, father's propensity for physical violence posed a continuing risk, particularly because the parents would maintain contact with one another as they continued to co-parent their daughter. The order that father participate in a domestic violence program was "designed to eliminate" some conditions that led to the assertion of dependency jurisdiction, and was within the court's discretion. (See § 362, subd. (d).)

Third, the record contains evidence that refutes father's claim that he is merely a "social" drinker. Mother shared with DCFS concerns she had expressed to father regarding his excessive drinking, and the danger posed to him and others by drinking and driving. Father ignored and became increasingly frustrated by mother's "constant" admonitions. The juvenile court acted within its discretion in requiring assurance that father did not continue to drive while drunk, by ordering him to undergo a minimal number of random alcohol tests. Juvenile courts have broad discretion to issue disposition orders requiring parents to participate in remedial programs even where no specific count in the dependency petition specifies the problem requiring

remediation. (*In re Christopher H.* (1996) 50 Cal.App.4th 1001, 1005, 1008 [affirming order that, among other things, required parent to submit to random drug or alcohol testing, even though the count regarding the parent's substance abuse problem was not sustained].)

Father's reliance on *In re Sergio C.* (1999) 70 Cal.App.4th 957, is misplaced. There, the parent denied any involvement with drugs. (*Id.* at p. 960.) By contrast, the juvenile court here credited mother's claim that father regularly drove home drunk, and ignored or became frustrated with her repeated warnings about how dangerous it was for him to drink and drive. Father acknowledges that he drinks. He simply denies that he has a drinking problem. The court did not abuse its discretion by seeking assurance that father did not continue to drink and drive, and restricting him to monitored visits until he provided such assurance.

Natalie A. offers guidance. There, the court asserted jurisdiction over three children based on the mother's substance abuse, and the children were returned to their father's custody. After the father twice left the children (all under six years old) without adult supervision, the juvenile court sustained a supplemental petition alleging the father's marijuana abuse rendered him incapable of caring for them. (*Natalie A., supra*, 243 Cal.App.4th at p. 184.) On appeal, the father challenged the sufficiency of the evidence to support jurisdiction, arguing that his occasional use of marijuana was not drug "abuse," and it was an abuse of discretion for the court to order him to test and complete a drug treatment program. (*Id.* at p. 185.) The appellate court affirmed,

concluding that the juvenile court could reasonably have inferred a nexus between the drug use and father's failure to ensure that his children were safely cared for. It also found the disposition order proper on the ground that the "evidence established that father's marijuana abuse posed a substantial risk to the children in light of their very young ages." (*Id.* at p. 187.)

Here, as in *Natalie A.*, the dispositional order was rationally tailored to protect Amber's interest. On this record, the juvenile court reasonably could infer that father had a drinking problem and there was a nexus between his abuse of alcohol and an inability to ensure Amber's safety and proper care. It was not an abuse of discretion for the court to conclude that alcohol testing and, if necessary, a treatment program, were reasonably necessary to eliminate conditions that led to Amber's dependency. (See *Christopher H.*, *supra*, 50 Cal.App.4th at p. 1008 ["the [juvenile] court would have been remiss if it failed to address appellant's substance abuse even though that problem had not yet affected his ability to care for [the dependent child]"].)

However, we agree with father that the juvenile court lacked a basis for requiring him to submit to drug testing. A reunification plan "must be appropriate for each family and be based on the unique facts relating to that family." (*In re Michael S.* (1987) 188 Cal.App.3d 1448, 1458.) "The program in which a parent . . . is required to participate shall be designed to eliminate those conditions that led to the court's finding that the minor is a person described by Section 300." (*In re Basilio T.* (1992) 4 Cal.App.4th 155, 172, superseded by statute on

another ground, as noted in *In re Lucero L.* (2000) 22 Cal.4th 1227, 1239-1242; § 362, subd. (c).)

Father correctly observes that the record contains no evidence he uses or has ever used drugs, let alone that any drug use impacted his ability to care for Amber. Thus, as to drug testing requirement, the dispositional order was an abuse of discretion. If, in the future, DCFS discovers facts indicating that drug use by father interferes with his ability to care for Amber, DCFS may present that evidence and the court may make an appropriate order at that time. Accordingly, we reverse the portion of the disposition order and case plan regarding drug testing for father.

b. *Monitored Visitation*

Father contends that the juvenile court exceeded its authority by restricting him to monitored visitation which is not necessary to protect Amber because there is no evidence he had any ongoing issues with violence, or that he was violent with any child. He also argues that his visits with Amber would not place him in a position requiring him to maintain contact with mother, such that violence between them would continue and place Amber at risk. We conclude otherwise. Absent evidence that father acknowledged and addressed his propensity for violence, and provided assurance that he had ceased drinking and driving, the court acted within its discretion to restrict him to monitored visitation.

DISPOSITION

The portion of the November 1, 2017 disposition order and case plan requiring father to submit to five random or on-demand drug tests is reversed. The juvenile court is directed to correct the November 1, 2017 minute order to reflect this change. In all other respects the findings and orders are affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

WILLHITE, Acting P. J.

We concur:

MANELLA, P. J.

DUNNING, J.*

*Retired Judge of the Orange County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.